

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1271 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT ELECTRICITY BOARD

Versus

VIMALKUMAR MOHANBHAI

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Appearance:

MR RC JANI with MR NK MAJMUDAR for Appellant

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/07/98

ORAL JUDGEMENT

1. This first appeal is filed by the Gujarat Electricity Board against the judgment and decree of Civil Judge, (S.D.) Junagadh dated 19th April, 1988 in Special Civil Suit No.134/83 under which the plaintiff's-respondent's suit for compensation of Rs.75000/- with interest at the rate of 6% from 16-1-1982 till realisation has been decreed.

2. The facts of the case are that the plaintiff a minor filed this civil suit through his natural guardian - father for the compensation of loss of his right hand in accident. The plaintiff is resident of village Kanja and he was doing the agricultural work. For the facility of passing the electric current, the defendants-appellants have installed electric poles. The defendants-appellants have installed 11 K.V. electric line over Kanja Gaucher sim and one pole was installed near village Kanja and one iron bar was also installed to tight the pole. On 30th August, 1981, the plaintiff and his sister went to field of the plaintiff for giving meal to his father and after giving meal, both the brother and sister were returning to their house and when they came near village site, they had to pass nearby the electric pole. When the plaintiff was trying to pass nearby the electric pole, accidentally he got electric shock and sustained severe burn marks on the hand and severe injury was caused to him. He was admitted in hospital at Junagadh and thereafter transferred at Ahmedabad and all the efforts have been made by Doctors even though they are unable to save the life of the plaintiff and they informed that if his parents want to save the life of the plaintiff then the right hand of the plaintiff will have to be amputated from the shoulder. The poor father had to agree with the proposition of the Doctor and ultimately the right hand of the plaintiff was amputated, which has resulted in permanent disability. After giving notice to the respondents, he filed the suit for recovery of Rs.75000/-. The defendants have taken the defence that the accident has not been resulted because of the carelessness on the part of the officers of the appellants. On the contrary, the plaintiff was climbing on the pole and he fell down from the pole and sustained injury, which is as a result of his own negligence and wrong doer cannot get benefit of his wrong.

3. On the basis of the pleadings of the parties, learned court below framed as many as five issues in this case vide Ex.30.

4. In support of his case, the plaintiff produced birth certificate Ex.35, Doctor's certificate Ex.40A, the father of the plaintiff was examined at Ex.34, the plaintiff was examined at Ex.41 and two other witnesses, namely, Vallabh Nanji Ex.42 and Saroj Mohanlal Ex.43 have been produced from the side of the plaintiff. The defendants-appellants have examined Ramji Fulji at Ex.45. The trial court after considering the evidence of the parties held that the plaintiff was injured on 30th August, 1982 due to the electric shock. It has also been

held that the plaintiff proved that due to negligent act on the part of the appellants or its officers in maintaining its line, he sustained the disability. The learned trial court has held that the plaintiff has suffered damage upto Rs.75000/-. The defence of the appellant was not accepted and accordingly the decree has been passed.

5. Learned counsel for the appellants only challenged the finding of the trial court so far it relates to the quantum of compensation. Firstly, it is vehemently contended that the award of Rs.15000/- under the head, medical expenses, is highly excessive and could not have been granted. The plaintiff has failed to produce any evidence that he has incurred that much of amount under the head of medical expenses. It has next been contended that Rs.50000/- as awarded for compensation for the loss of future prospects is also towards the higher side. The plaintiff was only a boy of 7 to 8 years and that amount should not have been awarded.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellants.

7. In this case, the evidence has come on record that the plaintiff had to stay in the hospital for about more than two months and he had undergone the operation of amputation of right hand from the shoulder. Totally, he had undergone the treatment for three months in different hospitals far away from his native village. These facts are not in dispute. Taking into consideration the fact that the plaintiff had to undergo treatment for three months at different hospitals and in fact he remained as an indoor patient for about two months in the hospital and had undergone the operation of amputation of right hand from shoulder, this amount of Rs.15000/- awarded under the head of medical expenses cannot be said to be excessive. Learned counsel for the appellant contended that the plaintiff had taken the treatment at Civil Hospital and as such this much of amount under the medical expenses could not have been incurred by him. I fail to see any justification in this contention and reason is that the appellants have not produced any such evidence that in the Civil Hospital, the patient who remains there for two months and has undergone the operation of amputation of right hand from shoulder would not have incurred a single pie towards the medical expenses. In the absence of any rebuttal from the side of the appellants and looking to the fact, as

stated above, awarding of Rs.15000/- to the plaintiff under the head of medical expenses, cannot be said to be towards the higher side.

8. So far as the award of compensation of Rs.50,000/- to the plaintiff for the loss of future prospects that too is also not towards the higher side. The plaintiff was a young boy of 7 to 8 years at the time of accident and he belongs to labour class for whom this right hand is very important limb of the body. Because of the amputation of right hand from the shoulder, the plaintiff has become totally incapable to do the labour work and the future loss is certainly there. It is a case of permanent disability and taking into consideration all these facts, this amount of Rs.50,000/awarded is also not towards the higher side.

No other point has been raised.

9. In the result, this appeal fails and the same is dismissed. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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